



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R05-OAR-2015-0699; FRL-9271-02-R5]**

**Air Plan Approval; Ohio; Partial Approval and Partial Disapproval of the Muskingum River SO<sub>2</sub> Nonattainment Area Plan**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is partially approving and partially disapproving a revision to the Ohio State Implementation Plan (SIP) intended to provide for attainment of the 2010 primary, health-based 1-hour sulfur dioxide (SO<sub>2</sub>) national ambient air quality standard (NAAQS or "standard") for the Muskingum River SO<sub>2</sub> nonattainment area. This SIP revision (hereinafter referred to as the Muskingum River SO<sub>2</sub> plan or plan) includes Ohio's attainment demonstration and other attainment planning elements required under the Clean Air Act (CAA). By this action, EPA is approving the base year emissions inventory and affirming that the nonattainment new source review requirements for the area have been met. EPA is disapproving the attainment plan, since the plan relies on, among other things, acquisition of a parcel of land by a facility located within the nonattainment area, Globe Metallurgical (Globe), that has not occurred. Additionally, EPA is disapproving the plan for failing to meet the requirements for meeting reasonable further progress (RFP) toward attainment of the NAAQS,

reasonably available control measures/reasonably available control technology (RACM/RACT), emission limitations and control measures as necessary to attain the NAAQS, and contingency measures.

**DATES:** This final rule is effective on **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2015-0699. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID-19. We recommend that you telephone Gina Harrison, Environmental Scientist, at (312) 353-6596 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Gina Harrison, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604,

**SUPPLEMENTARY INFORMATION:**

**I. What actions did EPA propose in this SIP submission?**

On November 30, 2021,<sup>1</sup> EPA proposed to partially approve and partially disapprove Ohio's SO<sub>2</sub> plan for the Muskingum River area submitted on April 3, 2015, and October 13, 2015, and supplemented on June 23, 2020, and June 1, 2021. Prior to the November 30, 2021, proposed rule, on September 29, 2020,<sup>2</sup> EPA proposed to approve Ohio's SO<sub>2</sub> plan for the Muskingum River area. EPA also proposed to approve and incorporate by reference Ohio EPA's DFFOs issued to Globe on June 23, 2020, including emission limits and associated compliance monitoring, recordkeeping, and reporting requirements. In addition, EPA proposed to approve the base year emissions inventory and to affirm that the new source review requirements for the area had previously been met.

EPA's notice of proposed rulemaking provided an explanation of the applicable provisions in the CAA and the measures and limitations identified in Ohio's attainment plan to satisfy these provisions. Ohio's plan was based on, among other things, Globe purchasing a tract of property to the north of the facility that was modeled to be impacted by SO<sub>2</sub> emissions from the facility. EPA found that the inclusion of this property within Globe's fenceline was necessary to demonstrate that no violations of the 1-hour SO<sub>2</sub> NAAQS would occur outside of company property.

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<sup>1</sup> 86 FR 67885 (November 30, 2021).

<sup>2</sup> 85 FR 60933 (September 29, 2020).

On June 1, 2021, EPA learned from Ohio EPA that Globe had decided not to purchase the land as anticipated by the attainment plan. As the attainment demonstration relied on the inclusion of this property within Globe's fenceline, failure to obtain the land renders the attainment demonstration invalid. Without a valid attainment demonstration, the proposed plan does not meet the requirements for meeting RFP toward attainment of the NAAQS, RACM/RACT, emission limitations and control measures as necessary to attain the NAAQS, and contingency measures. Final action to disapprove the attainment demonstration will start sanctions and Federal implementation plan (FIP) clocks for this area under CAA sections 179(a)-(b) and 110(c), respectively. Sanctions and FIP clocks will be terminated by an EPA rulemaking approving a revised attainment demonstration.

## **II. What is EPA's response to comments received on the proposed rulemaking?**

The proposed action described above provided a public comment period that closed on December 30, 2021. EPA received no comments on the proposed action.

## **III. What Action is EPA Taking?**

EPA is approving the base year emissions inventory and affirming that the new source review requirements for the area have been met. EPA is disapproving Ohio's attainment demonstration for the Muskingum River SO<sub>2</sub> nonattainment area, as well as the requirements for meeting RFP toward attainment of the NAAQS, RACM/RACT, emission limitations and control measures

as necessary to attain the NAAQS, and contingency measures.

This disapproval starts sanctions clocks for this area under CAA section 179(a)-(b), including a requirement for 2-for-1 offsets for any major new sources or major modifications 18 months after the effective date of this action, and highway funding sanctions 6 months thereafter, as well as initiate an obligation for EPA to promulgate a FIP within 24 months, under CAA section 110(c), unless in the meantime EPA has approved a plan that satisfies the requirements that EPA is finding unsatisfied. Ohio has committed to submit a supplemental submittal addressing EPA's concerns. Evaluation of such submittal would take place in a subsequent action.

#### **IV. Statutory and Executive Order Reviews.**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action partially approves and partially disapproves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian

reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within

which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control,  
Incorporation by reference, Intergovernmental relations,  
Reporting and recordkeeping requirements, Sulfur oxides.

Dated: January 11, 2022.

Debra Shore,  
*Regional Administrator, Region 5.*

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

2. In § 52.1870, the table in paragraph (e) is amended under the heading “Summary of Criteria Pollutant Attainment Plans” by adding an entry for “SO<sub>2</sub> (2010)” after the entry for “SO<sub>2</sub> (2010)” (with a State date of 2/16/2017) to read as follows:

**§ 52.1870 Identification of plan.**

\* \* \* \* \*

(e) \* \* \*

EPA-Approved Ohio Nonregulatory and Quasi-Regulatory Provisions

Title	Applicable geographical or non-attainment area	State date	EPA approval	Comments
* * * * *				
Summary of Criteria Pollutant Attainment Plans				
* * * * *				
SO <sub>2</sub> (2010)	Muskingum River	6/23/2020	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	EPA is approving only the emissions inventory and nonattainment NSR elements.
* * * * *				

3. Section 52.1873 is amended by adding paragraph (b) to read as follows:

**§ 52.1873 Approval status.**

\* \* \* \* \*

(b) The Administrator disapproves Ohio's attainment demonstration, submitted on April 3, 2015, and October 13, 2015, and supplemented on June 23, 2020, and June 1, 2021, for the Muskingum River SO<sub>2</sub> nonattainment area.

[FR Doc. 2022-00784 Filed: 1/14/2022 8:45 am; Publication Date: 1/18/2022]